



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 19, 2010

Ms. Jennifer Rutherford McClure
Assistant District Attorney - Civil Division
Denton County District Attorney
P.O. Box 2850
Denton, Texas 76202

OR2010-17550

Dear Ms. McClure:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 400807.

The Denton County Health Department (the "department") received a request the following six categories of information: (1) the requestor's client's laboratory testing results for salmonella; (2) the requestor's client's PFGE test results for her salmonella isolate; (3) line list of similar isolates; 4) the requestor's client's case report form(s); 5) the requestor's client's "Case Series Questionnaire(s)"; and (6) "NEDSS (or other) General Notifiable Disease Report Forms." You state the department does not have any information responsive to categories two or three of the request.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested third party may submit comments stating why information should or should not be released).

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Chapter 81 of the Health and Safety Code codifies the Communicable Disease Prevention and Control Act. Section 81.046 of the Health and Safety Code provides in pertinent part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of Health] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition;
or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

...

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority, the local health department, or the department.

Health & Safety Code § 81.046(a)-(d), (f). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies.

You indicate that the submitted information was acquired or created during an investigation conducted pursuant to chapter 81. We note the exceptions to confidentiality in sections 81.046(d) and 81.046(f) are not applicable in this instance. Thus, upon review we conclude that the submitted information is generally confidential under section 81.046 of the Health and Safety Code.

However, in this instance the requestor is the attorney for an individual who is the subject of the submitted information. The requestor has submitted a copy of an "Authorization to Disclose Health Information," which is signed by the requestor's client. The department acknowledges it received an authorization form to disclose information from the requestor's client whose information is at issue. We note that section 81.046(c) provides for the release of "[m]edical or epidemiological information . . . with the consent of each person identified in the information[.]" *Id.* § 81.046(c)(2). You question whether the department is required to release the information at issue pursuant to section 81.046 if proper consent is received by the department or whether such release is optional.

In ORD 577, this office also concluded that although subsection 81.046(c)(2) uses the permissive term "may," this subsection must be read together with the statutory predecessor to section 552.023 of the Government Code. *See* ORD 577 at 3. Under the statutory predecessor to section 552.023, a person has a special right of access to information which is withheld from disclosure to the general public pursuant to laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. This office concluded that the conditions placed on the release of medical or epidemiological information in section 81.046 are designed to protect individual privacy, since this information may be released if each person identified in the information gives consent. *See* ORD 577 at 3. Thus, section 81.046(c)(2), when read together with the statutory predecessor to section 552.023, required the Hidalgo county health department to release to a requestor any medical or epidemiological information it had concerning an individual who consented to the release. *See id.* Therefore, we find that if the department receives proper consent from the requestor under section 81.046(c)(2), then the requestor has a right of access under that section to his client's medical or epidemiological information and it must be released to him. In that case, the department must withhold the remaining information under section 552.101 in conjunction with section 81.046. If the department does not receive proper consent, then it must withhold the submitted information in its entirety under section 552.101 in conjunction with section 81.046. Although you ask our office to determine whether the consent authorization you received from the requestor is valid, this office is unable to make a determination on the validity of the authorization provided.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/tp

Ref: ID# 400807

Enc. Submitted documents

c: Requestor
(w/o enclosures)